IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 834 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

GUJ RURAL IND MARKETING CORPN

Appearance:

MR NIKHIL KARIYAL for MR BP TANNA for Petitioner

MR HS MUNSHAW for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/09/2001

C.A.V. JUDGEMENT

1. This petition under Article 226 of the Constitution seeks to challenge the order of termination dated 29.12.1988 issued by the respondent-Corporation while abolishing the post of Manager (Marketing) held by the original petitioner. Unfortunately, the original petitioner has passed away during the pendency of the

petition and his legal representatives are brought on record to prosecute the matter. However, for the sake of convenience, the original petitioner is described as 'the petitioner' hereinbelow. When the petition was admitted on 16.4.1991, interim relief directing the respondent not to make any appointment of any person to any post in the pay scale of the petitioner without considering the case of the petitioner for such appointment was granted.

2. The short facts of the case are that, in response to an advertisement for appointment on the post of marketing manager, the appellant had applied, he was selected and was initially appointed on probation and was confirmed with effect from 27.1.1985 and eventually he also crossed the 'efficiency bar'. During the period of his service from 1985 to 1988, the sales of the respondent Corporation had increased and the petitioner was entrusted with several duties related to some of the departments. In December 1988, the service of the petitioner was terminated and his legal dues were offered on the grounds that major production centres of the respondent-Corporation had been closed down and the government had stopped giving grants for running those production centres. It is further elaborated by the affidavit of the managing director of the respondent-Corporation that the petitioner was looking after production, sale and other related activities in respect of the Corporation's garment making production centres only. Out of the nine garment making production centres, all, except one centre, were decided to be closed down for having become economically unviable and on account of stoppage of grants from the government. The entire staff working at those production centres were also decided to be retrenched. Accordingly, the post of Manager (Marketing) was abolished and the petitioner was discharged from service tendering a sum of Rs.12,636/-, being three months' salary in lieu of three months' notice, as stipulated in the petitioner's initial appointment order. The petitioner had accepted the order and the amount and subsequently filed the present petition. The decision to close down the production centres and abolish the post of Manager (Marketing) was taken by a resolution of the Board of Directors of the Corporation and the impugned order of termination was passed in execution of the said decision.

3. There was no allegation of mala fides against the respondents. The learned counsel for the petitioner however argued that in view of the increasing sales and the petitioner's readiness to serve at another equivalent post, the decision to terminate his service was

arbitrary. It was submitted that the termination was also in violation of the provisions of Rule 266 of the Bombay Civil Services Rules (BCSR), which required the respondents to offer to the petitioner an option to be appointed on another post. A post of Manager (Projects) which was equivalent in status was lying vacant in the Corporation and could have been up-graded and offered to the petitioner. It was also submitted that the respondent-Corporation had, besides garment making production centres, several other departments and marketing activities due to which abolition of the post of Manager (Marketing) was neither rational nor justified.

4. In absence of any motives being attributed to the respondents, the aspect which can be examined in a petition under Article 226 of the Constitution is whether the action of the respondents in discharging the petitioner was in any way illegal or arbitrary. As far as the internal management and the policy of the Corporation were concerned, it was entirely in the discretion of the management to decide whether to create, continue or to abolish a post and whether and when to fill up such post. It could not be shown on behalf of the petitioner as to how the BCSR applied to the respondent-Corporation. Even otherwise, it is averred by the Managing Director of the respondent-Corporation that the alternative post suggested by the petitioner was not a managerial post but was a technical post, requiring posting of a technically qualified person. As against the plea of rising sales of the respondent Corporation, it is averred on behalf of the respondent that the production centres looked after by the petitioner had become economically unviable and the Government had also stopped giving grants for their running.

5. In these facts and circumstances, there is no reason to hold that the action and order of termination of service of the petitioner was in any way either illegal or arbitrary. Therefore, the petition fails and it is rejected. Rule is discharged with no order as to costs. Interim relief stands vacated. Sd/-

(D.H.Waghela, J.)

(KMG Thilake)